

STATE OF NEW YORK
DEPARTMENT OF STATE

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Minutes of the NYS Fire Prevention and Building Code Council meeting on Friday, June 17, 2022, commencing at 10:01 a.m. and held by videoconference call (WebEx):

Council members and designees present:

Matthew Tebo, Presiding
Benjamin Keller
Michael Weber
Vincent Rapacciuolo
Claudia Braymer

Joseph Toomey
Shawn Hamlin
Robert Hughes
William Tuyn
Dominic Marinelli

Staff present: John Addario, Panagiota Hyde, Kevin Duerr-Clark, Emma Gonzalez-Laders, Gregory Benton, Daniel Carroll, China Clarke, Jeanne Rice, Hendrikus Shank, and Chad Sievers.

Agenda Item 1. Welcome.

Chairperson Tebo opened the meeting and welcomed a new staff person, Hendrikus Shank, to the Energy Code Services unit.

Kevin Duerr-Clark called the roll and announced that ten (10) Code Council members were present. Chairperson Tebo noted that a quorum was present, called the meeting to order, and asked Kevin Duerr-Clark to explain the meeting procedures.

Kevin Duerr-Clark explained the meeting was being held via WebEx videoconference call pursuant to Chapter 1 of the Laws of 2022 and Executive Order No. 11 issued on November 26, 2021, and subsequent Executive Orders extending the state disaster emergency declared in Executive Order 11, and also explained the general rules and procedures to be followed during the meeting.

Chairperson Tebo gave an overview of the agenda. Kevin Duerr-Clark made one change to the agenda - moving the Village of Baldwinsville's energy code filing to after the Village of Oyster Bay Cove's energy code filing.

Agenda Item 2. Draft Minutes – March 4, 2022.

Chairperson Tebo asked if anyone wished to propose changes to the minutes of the March 4, 2022 meeting. Hearing none, Chairperson Tebo made a motion to approve the minutes without changes. Joseph Toomey seconded the motion. Michael Weber abstained from voting because he did not attend that meeting. The motion was approved unanimously by voice vote.

Agenda Item 3. Public Hearing Pursuant to Section 103-a of the Public Officers Law.

Chairperson Tebo announced that a public hearing would be held at this meeting, for a proposed resolution authorizing the use of videoconferencing and establishing written procedures governing member and public attendance at Code Council meetings.

Panagiota Hyde presented a summary of the legislative amendments to the Public Officers Law, which led to the development of the proposed resolution and written procedures.



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Then, at 10:12 a.m., Chairperson Tebo opened the public hearing (pursuant to Public Officer's Law Section 103-A) to receive public comments on the proposed adoption of the resolution authorizing the use of videoconferencing; and to establish written procedures governing member and public attendance for meetings of the Code Council, and meetings of any and all committees or subcommittees of the Code Council now in existence or hereinafter established.

Chairperson Tebo announced that he was the presiding officer at the public hearing and instructed the attendees on the procedure for making a public comment. No one from the public appeared or wished to comment. Chairperson Tebo asked the Department staff whether any public comments were submitted prior to the public hearing and Kevin Duerr-Clark confirmed that no public comments were submitted and there were no requests to speak at today's public hearing received by the Department. Chairperson Tebo closed the public hearing at 10:16 a.m.

Agenda Item 4. Adoption of Resolution and Written Procedures Pursuant to Section 103-a of the Public Officers Law.

Chairperson Tebo opened the floor to the Code Council to discuss the resolution and written procedures pursuant to Section 103-a of the Public Officers Law.

Claudia Braymer asked if the Code Council members could submit a written "notification" to be excused from a meeting in cases of extraordinary circumstances, rather than submitting a written "request." Panagiota Hyde explained the need to seek approval based on the difficulty of obtaining a quorum if multiple members need to be excused in any given meeting, and that if that scenario occurs, such meeting would need to be rescheduled if the quorum could not be obtained. Claudia Braymer agreed and made a motion to approve the resolution and written procedures as written. Robert Hughes seconded the motion and the motion was carried unanimously by roll call vote.

Agenda Item 5. Notice of Adoption - Grease Interceptors (add new Part 1229 to 19 NYCRR).

Chad Sievers noted that public comments were received on the proposed rule and that several public comments resulted in non-substantive changes to the proposed rule. Those comments were directed toward smaller grease interceptors and the optional barrier requirements. As a result, the proposed rule was modified to allow grease interceptors that are less than 24-inches deep to be allowed to have the signs to be smaller and adhesive-backed, which would be more appropriate for the installation locations. The other comment related to barrier requirements and as a result the language of the rule was also modified slightly to clarify the barrier, gate, and the sign's structural support requirements.

Kevin Duerr-Clark reminded the Code Council that the proposed rule is the result of a law that went into effect on March 22, 2022, and that the law came about due to a tragic incident that occurred in western New York. Kevin Duerr-Clark then added that there currently is an emergency rule that expires on June 19, 2022; however, the proposed rule will not be effective until it is published in the State Register, which is intended to be July 6, 2022. Therefore, the Code Council was urged to adopt a new emergency rule, under the next agenda item, to allow the provisions to be continuously in effect.

Chairperson Tebo asked for comments or discussion regarding the rule, and hearing none, proceeded to make two motions, read by Panagiota Hyde. The first found that the rule caused no significant environmental impact and the second was to file the Notice of Adoption and Proposed Rule Making and the amendments to the Uniform Code to be made by that rule, effective on July 6, 2022, rather than 90 days after publication of the notice of adoption of this Rule, as authorized by Executive Law § 378 (19)(a)(i), is necessary to protect health, safety, and security. Joseph Toomey seconded both the first and second motions, respectively. The motions were carried unanimously by roll call vote.

Agenda Item 6. Notice of Emergency Adoption - Grease Interceptors (add new Part 1229 to 19 NYCRR).

Chairperson Tebo read, into the record, the consideration of a motion to adopt the Rule on an emergency basis before the permanent rule becomes effective.

Kevin Duerr-Clark reiterated the reason why the emergency adoption was necessary (see agenda item 5), then added that Staff had made the same changes to this rule as the ones made to the permanent rule (summarized by Chad Sievers in agenda item 5).

Chairperson Tebo asked for comments or discussion regarding the rule, and hearing none, proceeded to make two motions, read by Panagiota Hyde. The first found that the rule caused no significant environmental impact and the second was to file the Notice of Emergency Adoption on an emergency basis to protect public health, public safety, and general welfare. Claudia Braymer and Benjamin Keller seconded the first and second motions, respectively. The motions carried unanimously by roll call vote.

Agenda Item 7. Department of Environmental Conservation (DEC) 6 NYCRR Part 613 Petroleum Bulk Storage

Kevin Duerr-Clark noted that DEC sent the Division a draft of their proposed petroleum bulk storage regulation. Per Environmental Conservation Law (ECL) Article 17, Title 10, DEC is required to consult with the Code Council to assure that such rules and regulations are consistent with the Uniform Code. DEC updated its regulations in 2015, at which time the Code Council tasked the Division with coordinating with DEC to ensure consistency. Accordingly, and if the Code Council provides that same direction, the Division is prepared to work with DEC on this new update and plans to provide updates to the Code Council along the way.

Chad Sievers made a brief presentation on the scope of the proposed petroleum bulk storage regulation as follows: 1. It is a large task; the Petroleum Bulk Storage regulation is approximately 200 pages, multiple books and chapters within the Uniform Code will have to be analyzed for impact. 2. The Uniform Code and the DEC Regulations have different primary purposes and environmental protections; the Regulations are not parallel; and they reference different standards or different versions of standards. 3. Mock designs of several tank standards may be required in order to compare the requirements to determine if there are any contradictions.

Chairperson Tebo moved to allow Division Staff to consult with DEC on behalf of the Code Council pursuant to ECL Article 17, Title 10 [17-1015 (1)], Joseph Toomey seconded the motion.

Claudia Braymer inquired as to whether a final package will be delivered to the Code Council for approval or if DEC would immediately move forward with their proposed regulation following the consultation.

Kevin Duerr-Clark replied that when updates are presented to the Code Council, they will include any formal communication and status of DEC's regulatory processes.

Claudia Braymer then asked if the regulation has to do with the size and specifications of the tanks. Chad Sievers invited Amiel Lagatic, a representative from DEC, to respond.

Amiel Lagatic said they intend to consolidate to meet the October 13, 2015, Environmental Protection Act (EPA) Regulations. Modifying provisions for periodic testing of equipment and other minor changes are included in the regulation update.

Hearing no additional questions or discussion, Chairperson Tebo put the motion to a voice vote and it passed unanimously.

Agenda Item 8. More Restrictive Energy Code Filings (Energy Law §11-109).

Emma Gonzalez-Laders separated the Energy Code filings into 3 categories: (1) 4 filings that adopted NYStretch without modification, (2) 5 filings that adopted NYStretch while severing the mechanical ventilation requirements in R403.6.2, and (3) 1 filing that adopted NYStretch while severing the mechanical ventilation requirements in R403.6.2 with further modifications. The Energy Code filings were then presented in the aforementioned order.

- Village of Sodus – LL No. 1 of 2022
 - Motion to approve the local energy code as more restrictive read by Panagiota Hyde and made by Chairperson Tebo, seconded by Robert Hughes, unanimous approval by roll call vote.
- Village of Pittsford – LL No. 1 of 2022
 - Motion to approve the local energy code as more restrictive read by Panagiota Hyde and made by Chairperson Tebo, seconded by Joseph Toomey, unanimous approval by roll call vote.
- City of Canandaigua – LL No. 1 of 2022
 - Motion to approve the local energy code as more restrictive read by Panagiota Hyde and made by Chairperson Tebo, seconded by Robert Hughes, unanimous approval by roll call vote.
- Village of Tully – LL No. 2 of 2021
 - Motion to approve the local energy code as more restrictive, provided that the local energy code is interpreted and enforced with the condition that applications for variances from any standard or requirement of the State Energy Code may only be made to the Secretary of State pursuant to section 11-106 of the Energy Law and that no applications for variances from any more stringent standard or requirement of the local energy code may be made to the Department, the Secretary, or the Regional Board of Review, read by Panagiota Hyde and made by Chairperson Tebo, seconded by Joseph Toomey, unanimous approval by roll call vote.

Emma Gonzalez-Laders then listed the next 5 filings, which were those that severed the mechanical ventilation provisions. Claudia Braymer asked what part of NYStretch was being severed. Emma Gonzalez-Laders responded that an Energy Recovery Ventilator (ERV) and Heat Recovery Ventilator (HRV) must be installed based on these provisions and Emma Gonzalez-Laders noted that NYSEDA performed stringency analyses to confirm that even with those severed it is still more restrictive.

- Town of Philipstown – LL No. 1 of 2022
 - Motion to approve the local energy code as more restrictive read by Panagiota Hyde and made by Chairperson Tebo, seconded by Claudia Braymer, unanimous approval by roll call vote.
- Village of Oyster Bay Cove – LL No. 2 of 2022
 - Motion to approve the local energy code as more restrictive read by Panagiota Hyde and made by Chairperson Tebo, seconded by Shawn Hamlin, unanimous approval by roll call vote.
- Village of Baldwinsville – LL No. 6 of 2022 and LL No. 7 of 2022
 - Motion to approve the local energy code as more restrictive read by Panagiota Hyde and made by Chairperson Tebo, seconded by Joseph Toomey, unanimous approval by roll call vote.
- Town of Mamaroneck – LL No. 10 of 2021 and LL No. 11 of 2021
 - Motion to approve the local energy code as more restrictive read by Panagiota Hyde and made by Chairperson Tebo, seconded by Benjamin Keller, unanimous approval by roll call vote.
- Town of Somers – LL No. 6 of 2022

- Motion to approve the local energy code as more restrictive read by Panagiota Hyde and made by Chairperson Tebo, seconded by Robert Hughes, unanimous approval by roll call vote.

Emma Gonzalez-Laders gave a presentation on the last filing, which severed the mechanical ventilation provisions and made additional modifications by limiting compliance to the prescriptive path of the State Energy Code as amended by NYStretch (instead of 3 paths: the prescriptive path, the performance path, and the Energy Rating Index (ERI) path). Robert Hughes asked to confirm that they are limiting the compliance path to the prescriptive path and received confirmation from Emma Gonzalez-Laders.

- Town of New Castle – LL No. 6 of 2022
 - Motion to approve the local energy code as more restrictive read by Panagiota Hyde and made by Chairperson Tebo, seconded by William Tuyn, unanimous approval by roll call vote.

Agenda Item 9. More Restrictive Local Standards for Construction (Executive Law §379).

Chairperson Tebo invited Jeanne Rice to present the notice and petition pursuant to Executive Law §379 from the Village of Saltaire (LL No. 4 of 2022).

Jeanne Rice presented the Staff's analysis of the petition, which concluded with a recommendation for the Code Council to find and determine that the standards for construction imposed by Section 18-27 of the Village Code, as amended by Local Law No. 4 of 2022, are more restrictive than the Uniform Code and conform with accepted engineering and fire prevention practices and the purposes of Article 18 of the Executive Law; and requested that the Code Council find whether or not the conditions cited in the petition are "special conditions" pursuant to Executive Law §379.

Chairperson Tebo gave a brief overview of what special conditions are and stated that he believes the conditions in the Village of Saltaire are what the legislature contemplated in the statute. Claudia Braymer supported Chairperson Tebo's position. William Tuyn was also in agreement and noted that this happens to be a very special set of circumstances even for a barrier island.

The motion to approve and adopt more restrictive standards for construction than the Uniform Code was read by Panagiota Hyde and made by Chairperson Tebo. Joseph Toomey seconded the motion and the motion carried unanimously by roll call vote.

Agenda Item 10. Other More Restrictive Local Standards and Energy Code Filings.

Kevin Duerr-Clark noted that several municipalities' notices and petitions pursuant to Executive Law §379 and/or filings pursuant to Energy Law §11-109 had been received by the Division, but for various reasons were not ready to be formally presented to the Code Council. The presentation included the following:

- The City of Ithaca and Town of Ithaca each adopted a local green code and submitted a filing pursuant to Energy Law §11-109. The Division received supplemental information on November 16 following the initial submission, and staff is reviewing that information in order to make a recommendation to the Code Council. Additionally, the Town of Ithaca revised their local law recently to remove a single provision they felt was less restrictive. Staff continues to work with both the City and the Town.
- As noted at the previous Code Council meeting, the City of Kingston submitted both a notice and petition pursuant to Executive Law §379 and a filing pursuant to Energy Law §11-109 for the City's adoption of NYStretch. At the time of submission, the City requested that their local law not be presented to the Code Council until the City provided some supplemental information. On June 7, the Division received said

supplemental information. Staff will review this information and plan to have a recommendation prepared for the Code Council at the next meeting in September.

- Hastings-on-Hudson also recently submitted a notice and petition pursuant to Executive Law §379 for the Village's adoption of NYStretch. However, there were some procedural concerns with the submission, which were relayed to the Village. Staff will review the notice and petition and plan to have a recommendation ready for the September meeting.
- In previous meetings, we have spoken about the Town of Bethel and their submission of both a notice and petition pursuant to Executive Law §379 and a filing pursuant to Energy Law §11-109 for the Town's adoption of NYStretch. The notice and petition and the filing have been withdrawn, and a new law was passed by the Town. However, to date, the Department has not received any new submissions. Once received, the Division will review and make a recommendation to the Code Council.
- At the last meeting, the Village of Elmsford's notice and petition pursuant to Executive Law §379 for a local law with more restrictive construction provisions was denied and Division staff was tasked with providing any necessary technical support to the Village. The Division has been in contact with the Village as needed and will continue to do so.

Agenda Item 11. Division Update.

Chairperson Tebo invited John Addario to present the Division update.

John Addario updated the Code Council as follows:

- Regarding progress made to shorten the Code Development process (discussed at the last meeting). One way is to have staff partake in the process of developing ICC's model codes (I-Codes) by way of code change proposals through the ICC. We have also obtained the software used to develop the I-Codes and plan to test it out on the 2020 Property Maintenance Code of New York State.
- The staff's code change proposals presented at ICC's Committee Action Hearings in the spring were very successful.

Chairperson Tebo asked the Council if they have any additional questions about the Division's activities, and hearing none, moved on to Agenda Item 12.

Agenda Item 12. Public Comment Period.

Chairperson Tebo opened the floor for public comment. No one from the public wished to provide comment.

Agenda Item 13. Future Meetings.

The remaining Code Council meeting dates for 2022 are September 23 and December 9. Chairperson Tebo announced that prior to the September meeting, the Division will reach out to members in order to prepare the 2023 Schedule.

Agenda Item 14. Other Business.

Chairperson Tebo announced that the Code Council received a letter from Senator Brad Hoylman regarding ventilation, and that the Legislature finished its session for the year and both houses have passed several bills that may impact the Code Council and/or the Codes generally, but that we will follow up with the Code Council with further details if such bills become law following gubernatorial action.

Chairperson Tebo then thanked Staff for their hard work and made a motion to adjourn. Joseph Toomey seconded the motion and the motion carried by a unanimous voice vote.

The meeting adjourned at approximately 11:56 a.m.